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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 121107617-3050-01]

RIN 0648-XC351

Western Pacific Fisheries; 2013 Annual Catch Limits and Accountability Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Proposed specification; request for comments.

SUMMARY: NMFS proposes annual catch limits for western Pacific bottomfish, crustacean, precious coral, and coral reef ecosystem fisheries, and accountability measures to correct or mitigate any overages of catch limits. The proposed catch limits and accountability measures support the long-term sustainability of fishery resources of the U.S. Pacific Islands

DATES: Comments must be received by [insert date 15 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2012-0226, by either of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to

[www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0226](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0226),

click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- Mail: Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814-4700.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous), and will accept attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats only.

NMFS prepared three environmental assessments that describe the potential impacts on the human environment that would result from the proposed annual catch limits and accountability measures. Additional background information was also provided in the 2012 proposed and final specifications (77 FR 66, January 3,

2012, and 77 FR 6019, February 7, 2012). Copies of these documents are available from [www.regulations.gov](http://www.regulations.gov).

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIR Sustainable Fisheries, 808-944-2108.

SUPPLEMENTARY INFORMATION: Fisheries in the U.S. Exclusive Economic Zone (EEZ, or Federal waters) around the U.S. Pacific Islands are managed under four archipelagic-based fishery ecosystem plans (FEP), including the American Samoa FEP, the Hawaii FEP, the Pacific Remote Islands FEP, and the Mariana FEP (covering Guam and the Commonwealth of the Northern Mariana Islands (CNMI)), and one FEP for pelagic fisheries. The FEPs were developed by the Western Pacific Fishery Management Council (Council) and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Each FEP contains a process for the Council and NMFS to specify annual catch limits (ACLs) and accountability measures (AMs); that process is codified at 50 CFR 665.4 (76 FR 37285, June 27, 2011). The regulations require NMFS to specify, every fishing year, an ACL for each stock and stock complex of management unit species (MUS) included in an FEP, as recommended by the Council and in consideration of the best available scientific, commercial, and other information about the fishery. If an ACL is exceeded, the regulations require the Council to

take action to reduce the ACL for the subsequent fishing year by the amount of the overage, or take other actions, as appropriate.

#### Specification of ACLs

NMFS proposes to specify ACLs for bottomfish, crustacean, precious coral, and coral reef ecosystem fishery MUS in American Samoa, Guam, the CNMI, and Hawaii. NMFS based the proposed specifications on recommendations from the Council at its 155<sup>th</sup> meeting held on October 29 to November 1, 2012. A total of 101 ACLs are proposed: 22 in American Samoa, 27 in Guam, 22 in the CNMI, and 30 in Hawaii. The ACLs would be specified for the 2013 fishing year (January 1 through December 31, 2013, except for precious coral fisheries, July 1, 2012, through June 30, 2013). The proposed ACLs are identical to those NMFS specified for these fisheries in 2012, except for the bottomfish fisheries where the proposed catch limits are slightly higher compared to 2012.

NMFS is not proposing ACLs for bottomfish, crustacean, precious coral, or coral reef ecosystem MUS in the PRIA because commercial fishing is prohibited out to 50 nautical miles by Presidential Proclamation 8336, which established the Pacific Remote Island Marine National Monument (74 FR 1565, January 12, 2009), and because there is no habitat to support such fisheries in the EEZ beyond the monument boundaries. The Council is

separately working on an amendment to the PRIA FEP containing management measures to permit non-commercial fishing within the Pacific Remote Island Marine National Monument (as well as the Rose Atoll and Marianas Trench Marine National Monuments), and ensure non-commercial fishing, if allowed, is managed as a sustainable activity in accordance with provisions of Proclamation 8336. Additionally, NMFS is not proposing ACLs for MUS that are currently subject to Federal fishing moratoria or prohibitions. This includes all species of gold coral (73 FR 47098, August 13, 2008), all species of deepwater precious corals at the Westpac Bed Refugia (75 FR 2198, January 14, 2010), and the three Hawaii seamount groundfish: pelagic armorhead, alfonsin, and raftfish (75 FR 69015, November 10, 2010). The current prohibitions on fishing for these MUS serve as a functional equivalent of an ACL of zero.

NMFS is also not proposing ACLs for pelagic MUS at this time because it previously determined that pelagic species are subject to international fishery agreements or have a life cycle of approximately one year and, therefore, have statutory exceptions to the ACL requirements.

NMFS and the Council developed the proposed ACLs in accordance with the FEPs and Federal regulations. For Pacific Island crustacean, precious coral and coral reef ecosystem MUS, the Council, at its 155<sup>th</sup> meeting, recommended specifying the

2013 ACLs identical to the ACLs NMFS specified for these fisheries in 2012 (77 FR 6019, February 7, 2012). The data, methods, and procedures considered by the Council and its Scientific and Statistical Committee (SSC) in developing their respective fishing level recommendations for Pacific Island crustacean, precious coral, and coral reef ecosystem MUS are described in the EAs for the 2012 ACLs, and in the proposed specifications (77 FR 66, January 3, 2012) and final specifications (77 FR 6019, February 7, 2012) for that action.

For Pacific Island bottomfish MUS, the Council recommended specifying the 2013 ACLs equal to the acceptable biological catch as established by its SSC at the 111<sup>th</sup> SSC meeting held October 24-26, 2012. The data, methods, and procedures considered by the SSC and the Council in developing their respective fishing level recommendations for Pacific Island bottomfish MUS are described in detail in the EA that supports this action.

#### Proposed Annual Catch Limit Specifications

Table 1. American Samoa

<b>Fishery</b>	<b>Management Unit Species</b>	<b>Proposed ACL Specification</b>
Bottomfish	Bottomfish multi-species stock complex	101,000 lb (45,813 kg)
Crustacean	Deepwater Shrimp	80,000 lb (36,287 kg)
	Spiny Lobster	2,300 lb (1,043 kg)
	Slipper Lobster	30 lb (14 kg)
	Kona Crab	3,200 lb (1,451 kg)
Precious	Black Coral	790 lb (358 kg)

<b>Fishery</b>	<b>Management Unit Species</b>	<b>Proposed ACL Specification</b>
Coral	Precious Corals in the American Samoa Exploratory Area	2,205 lb (1,000 kg)
Coral Reef Ecosystem	Acanthuridae - surgeonfish	19,516 lb (8,852 kg)
	Lutjanidae - snappers	18,839 lb (8,545 kg)
	<u>Selar crumenophthalmus</u> - atule or bigeye scad	8,396 lb (3,808 kg)
	Mollusks - turbo snail; octopus; giant clams	16,694 lb (7,572 kg)
	Carangidae - jacks	9,490 lb (4,305 kg)
	Lethrinidae - emperors	7,350 lb (3,334 kg)
	Scaridae - parrotfish	8,145 lb (3,695 kg)
	Serranidae - groupers	5,600 lb (2,540 kg)
	Holocentridae - squirrelfish	2,585 lb (1,173 kg)
	Mugilidae - mullets	2,857 lb (1,296 kg)
	Crustaceans - crabs	2,248 lb (1,020 kg)
	<u>Bolbometopon muricatum</u> - bumphead parrotfish	235 lb (107 kg)
	<u>Cheilinus undulatus</u> - Humphead (Napoleon) wrasse	1,743 lb (791 kg)
	Carcharhinidae - Reef Sharks	1,309 lb (594 kg)
	All Other CREMUS combined	18,910 lb (8,577 kg)

Table 2. Mariana Archipelago - Guam

<b>Fishery</b>	<b>Management Unit Species</b>	<b>Proposed ACL Specification</b>
Bottomfish	Bottomfish multi-species stock complex	66,800 lb (30,300 kg)
Crustaceans	Deepwater Shrimp	48,488 lb (21,994 kg)
	Spiny Lobster	2,700 lb (1,225 kg)
	Slipper Lobster	20 lb (9 kg)
	Kona Crab	1,900 lb (862 kg)
Precious Coral	Black Coral	700 lb (318 kg)
	Precious Corals in the Guam Exploratory Area	2,205 lb (1,000 kg)
Cora Reef Ecosystem	Acanthuridae - surgeonfish	70,702 lb (32,070 kg)
	Carangidae - jacks	45,377 lb (20,583 kg)
	<u>Selar crumenophthalmus</u> - atulai or bigeye scad	56,514 lb (25,634 kg)
	Lethrinidae - emperors	38,720 lb (17,563 kg)

<b>Fishery</b>	<b>Management Unit Species</b>	<b>Proposed ACL Specification</b>
	Scaridae - parrotfish	28,649 lb (12,995 kg)
	Mullidae - goatfish	25,367 lb (11,506 kg)
	Mollusks - turbo snail; octopus; giant clams	21,941 lb (9,952 kg)
	Siganidae - rabbitfish	26,120 lb (11,848 kg)
	Lutjanidae - snappers	17,726 lb (8,040 kg)
	Serranidae - groupers	17,958 lb (8,146 kg)
	Mugilidae - mullets	15,032 lb (6,818 kg)
	Kyphosidae - chubs/rudderfish	13,247 lb (6,009 kg)
	Crustaceans - crabs	5,523 lb (2,505 kg)
	Holocentridae - squirrelfish	8,300 lb (3,765 kg)
	Algae	5,329 lb (2,417 kg)
	Labridae - wrasses	5,195 lb (2,356 kg)
	<u>Bolbometopon muricatum</u> - bumphead parrotfish	797 lb (362 kg) (CNMI and Guam combined)
	<u>Cheilinus undulatus</u> - Humphead (Napoleon) wrasse	1,960 lb (889 kg)
	Carcharhinidae - Reef Sharks	6,942 lb (3,149 kg)
	All Other CREMUS combined	83,214 lb (37,745 kg)

Table 3. Mariana Archipelago - CNMI

<b>Fishery</b>	<b>Management Unit Species</b>	<b>Proposed ACL Specification</b>
Bottomfish	Bottomfish multi-species stock complex	228,000 lb (103,419 kg)
Crustacean	Deepwater Shrimp	275,570 lb (124,996 kg)
	Spiny Lobster	5,500 lb (2,495 kg)
	Slipper Lobster	60 lb (27 kg)
	Kona Crab	6,300 lb (2,858 kg)
Precious Coral	Black Coral	2,100 lb (953 kg)
	Precious Corals in the CNMI Exploratory Area	2,205 lb (1,000 kg)
Coral Reef Ecosystem	Lethrinidae - emperors	27,466 lb (12,458 kg)
	Carangidae - jacks	21,512 lb (9,758 kg)
	Acanthuridae - surgeonfish	6,884 lb (3,123 kg)
	<u>Selar crumenophthalmus</u> - atulai or bigeye scad	7,459 lb (3,383 kg)
	Serranidae - groupers	5,519 lb (2,503 kg)
	Lutjanidae - snappers	3,905 lb (1,771 kg)

<b>Fishery</b>	<b>Management Unit Species</b>	<b>Proposed ACL Specification</b>
	Mullidae - goatfish	3,670 lb (1,665 kg)
	Scaridae - parrotfish	3,784 lb (1,716 kg)
	Mollusks - turbo snail; octopus; giant clams	4,446 lb (2,017 kg)
	Mugilidae - mullets	3,308 lb (1,500 kg)
	Siganidae - rabbitfish	2,537 lb (1,151 kg)
	<u>Bolbometopon muricatum</u> - bumphead parrotfish	797 lb (362 kg) (CNMI and Guam combined)
	<u>Cheilinus undulatus</u> - Humphead (Napoleon) wrasse	2,009 lb (911 kg)
	Carcharhinidae - Reef Sharks	5,600 lb (2,540 kg)
	All Other CREMUS combined	9,820 lb (4,454 kg)

Table 4. Hawaii

<b>Fishery</b>	<b>Management Unit Species</b>	<b>Proposed ACL Specification</b>
Bottomfish	Non-Deep 7 Bottomfish	145,000 (65,771 kg)
Crustacean	Deepwater Shrimp	250,773 lb (113,749 kg)
	Spiny Lobster	10,000 lb (4,536 kg)
	Slipper Lobster	280 lb (127 kg)
	Kona Crab	27,600 lb (12,519 kg)
Precious Coral	Auau Channel Black Coral	5,512 lb (2,500 kg)
	Makapuu Bed - Pink Coral	2,205 lb (1,000 kg)
	Makapuu Bed - Bamboo Coral	551 lb (250 kg)
	180 Fathom Bank - Pink Coral	489 lb (222 kg)
	180 Fathom Bank - Bamboo Coral	123 lb (56 kg)
	Brooks Bank - Pink Coral	979 lb (444 kg)
	Brooks Bank - Bamboo Coral	245 lb (111 kg)
	Kaena Point Bed - Pink Coral	148 lb (67 kg)
	Kaena Point Bed - Bamboo Coral	37 lb (17 kg)
	Keahole Bed - Pink Coral	148 lb (67 kg)
	Keahole Bed - Bamboo Coral	37 lb (17 kg)
	Precious Corals in the Hawaii Exploratory Area	2,205 lb (1,000 kg)
Coral Reef Ecosystem	<i>Selar crumenophthalmus</i> - akule or bigeye scad	651,292 lb (295,421 kg)
	<i>Decapterus macarellus</i> -	393,563 lb (178,517 kg)

<b>Fishery</b>	<b>Management Unit Species</b>	<b>Proposed ACL Specification</b>
	opelu or mackerel scad	
	Carangidae - jacks	193,423 lb (87,735 kg)
	Mullidae - goatfish	125,813 lb (57,068 kg)
	Acanthuridae - surgeonfish	80,545 lb (36,535 kg)
	Lutjanidae - snappers	65,102 lb (29,530 kg)
	Holocentridae - squirrelfish	44,122 lb (20,013 kg)
	Mugilidae - mullets	41,112 lb (18,648 kg)
	Mollusks - turbo snails; octopus	28,765 lb (13,048 kg)
	Scaridae - parrotfish	33,326 lb (15,116 kg)
	Crustaceans - crabs	20,686 lb (9,383 kg)
	Carcharhinidae - Reef Sharks	111,566 lb (50,605 kg)
	All Other CREMUS combined	142,282 lb (64,538 kg)

#### Proposed Accountability Measures

Each fishing year, NMFS and local resource management agencies in American Samoa, Guam, the CNMI, and Hawaii collect information about MUS catches and apply them toward the appropriate ACLs. Pursuant to 50 CFR 665.4, when the ACL for a stock or stock complex is projected to be reached, based on available information, NMFS must notify permit holders that fishing for that stock or stock complex will be restricted in Federal waters on a specified date. The restriction serves as the AM to prevent an ACL from being exceeded, and may include, but is not limited to, closure of the fishery, closure of specific areas, changes to bag limits, or restrictions in effort. However, fisheries statistics are generally not available to NMFS until at least six months after the data has

been collected. While the State of Hawaii has the capability to monitor and track the catch of seven preferentially-targeted bottomfish species in near-real time in comparison with NMFS specified ACLs (77 FR 56791, September 14, 2012), additional resources would be required to extend these capabilities to other bottomfish, crustacean, precious coral, and coral reef ecosystem MUS. Significant resources would also be required to support the establishment of in-season monitoring and tracking capabilities in American Samoa, Guam, and the CNMI.

Additionally, reliance on Federal logbook and reporting from Federal waters will not be sufficient to accurately monitor and track catches towards the proposed ACL specifications as the majority of fishing for bottomfish, crustacean, precious coral, and coral reef ecosystem fishery MUS occurs primarily in non-Federal waters, generally 0-3 nautical miles from shore. For these reasons, NMFS proposes to implement the Council's recommended AM, which requires the Council to conduct a post-season accounting of the annual catch for each stock and stock complex of MUS immediately after the end of the fishing year. If an ACL is exceeded, the Council would take action in accordance with 50 CFR 600.310(g), which may include a recommendation that NMFS reduce the ACL for the subsequent fishing year by the amount of the overage, or other measures, as appropriate.

NMFS will consider public comments on the proposed ACLs and AMs and will announce the final specifications as soon as possible. Comments on these proposed specifications must be received by [insert date 15 days after date of publication in the FEDERAL REGISTER], not postmarked or otherwise transmitted by that date. Regardless of the final ACL specifications and AMs, all other management measures will continue to apply in the fisheries.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed specification is consistent with the applicable western Pacific FEPs, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

#### Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that these proposed specifications, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the action, why it is being considered, and the

legal basis for it are contained in the preamble to this proposed specification.

The National Marine Fisheries Service (NMFS) based the proposed specifications on recommendations from the Western Pacific Fishery Management Council (Council) at its 155th meeting held on October 29 - November 1, 2012. A total of 101 ACLs are proposed: 22 in American Samoa, 27 in Guam, 22 in the Commonwealth of the Northern Mariana Islands (CNMI), and 30 in Hawaii. NMFS would specify the ACLs for the 2013 fishing year, which begins on January 1 and ends on December 31, except for precious coral fisheries which already began on July 1, 2012 and will end June 30, 2013. NMFS would apply some ACLs to fisheries for which there are no participants. These include certain crustacean fisheries (deepwater shrimp and Kona crab) and all precious coral fisheries outside Hawaii.

Fishermen should not face any adverse economic impacts as a direct result of the proposed ACLs and AMs. The Council and NMFS are not considering in-season closures in any of the fisheries to which these ACLs apply, due to the current inability of fishery management entities to conduct in-season tracking of catch in relation to the ACLs. As a result, fishermen would be able to fish throughout the entire season. In addition, the ACLs, as proposed, would not change the gear types, areas fished, effort, or participation of the fishery during the 2013

fishing season. A post-season review of the catch data would be required to determine whether any fishery exceeded its ACL. If an ACL is exceeded, the Council and NMFS would take action to correct the operational issue that caused the ACL overage. The environmental and socio-economic impacts of future actions, such as changes to future ACLs or AMs, would need to be evaluated separately once the required data are available.

For Pacific Island bottomfish, other alternatives that were considered but not selected called for alternative specifications lower than those that are proposed. However, because in-season tracking of catch data cannot be achieved in these fisheries, in-season AMs (such as a fishery closure) are not possible, and fishermen would be able to fish throughout the entire season under all alternatives considered. Therefore, the direct economic impacts to small entities during the 2013 fishing season would not likely differ among the alternatives.

As described earlier, the proposed action of specifying ACLs and AMs is expected to have little, if any, direct adverse economic impact. For active fisheries, the ACLs are generally in line with or greater than the current annual yields and there should be no disproportionate economic impacts between large and small entities. Furthermore, there is likely to be no disproportionate economic impacts among the universe of vessels based on gear, home port, or vessel length. Because the proposed

action would have little to no direct economic impact, NMFS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b).

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This action is exempt from review under the procedures of E.O. 12866.

Authority: 16 U.S.C. 1801 et seq.

Dated: January 24, 2013

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Alan D. Risenhoover,  
Director, Office of Sustainable Fisheries,  
performing the functions and duties of the  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

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